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SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1980

No. 80-6397

ORIGINAL COPY

RICHARD GRAHAM,

Petitioner,

-against-

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD JUDICIAL DEPARTMENT.

Office of the District Attorney
Sullivan County, New York
By: STEPHEN F. LUNGEN
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The petitioner's supplemental briefs failed to raise any constitutional arguments that would cause any different result other than denying their petition for writ of certiorari. Notwithstanding the case of Busch v. Florida, 392 So. 2d 272 (Cert den. June 1, 1981) their writ does not raise a choice of law problem of constitutional dimension nor does this case require the granting of the writ based upon a conflict between the states with respect to the retroactive application of Payton v. New York, 45 U.S. ___ 100 S. Ct. 1371.

The unique factual setting of petitioner's arrest permits this Court to decide and deny the instant writ without having to pass upon the above-mentioned questions. The prohibitions of the police making warrantless and non-consentual entries into a suspect's home was confined to routine felony arrests, not as to all arrests. There is nothing within the facts of this action that can lead one to the conclusion that it was routine. Therefore, regardless of this Court's decision in Payton v. New York, the arrest of this defendant would still be proper and has been so held by the Courts in New York as recently as May 29, 1981 when Chief Judge Lawrence H. Cooke denied the petitioner's application for reconsideration with respect to his application for leave to appeal. A copy of this certificate is attached hereto and made a part hereof.

With respect to the choice of law question raised by the petitioner, the procedural aspects of the arrest are governed by the law of the state in which there is trial jurisdiction. The procedural guidelines of the State of New York concerning the admissibility of evidence govern and were properly applied by all of the Courts in this state. With

respect to those procedures and giving consideration to the constitutional aspects of them, the arrest here was ruled to be lawful both prior to and subsequent to the Payton decision, and there is nothing contained within that decision that should be changed.

The Petitioner's allegation that this case should be reversed upon the basis that the Court of Appeals of the State of New York reversed the companion case of People v. Lucas is not justified. This is not a situation where the New York Court of Appeals is applying opposite interpretations of law to the same set of facts as alleged herein. The Lucas case was reversed based upon certain New York decisions which have dealt with the indelible right to counsel and particularly because a statement of the defendant was introduced in evidence after the Court of Appeals determined that this right to counsel attached. Upon reversing the case and returning it to the County Court, County of Sullivan, State of New York, for a re-trial, the Court also noted that certain items of physical evidence should have been suppressed based upon an overbroad search at the motel in Florida. The Court decided that five (5) physical items of evidence must be suppressed, but that the information leading to these items would be admissible.

The search question at the motel was dealt with extensively in both the Graham case, as well as Lucas, and even at the Appellate Division stage in New York, the Court found the search to be overbroad, but that the evidence admitted at trial was deemed to be harmless error. The Court of Appeals

did not hold the admission of evidence from the motel search in Lucas to be reversible error in and of itself. It is clear by the decision which is annexed to the Petitioner's reply and supplemental brief, that the basis for reversal was the statement and not the search.

It is respectfully submitted that, for the reasons stated herein and upon the original brief in opposition, the petition for writ of certiorari should be denied in all respects.

Dated: Liberty, New York
June 23, 1981

Respectfully submitted,

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